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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

8 RALPH COUNTRYMAN,
9 Petitioner,
0 vs.
1 JACK PALMER, *et al.*,
2 Respondents.

3:12-cv-00274-RCJ-VPC

ORDER

4 This action is a *pro se* petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2254,
5 by a Nevada state prisoner. Petitioner has paid the filing fee for this action, therefore, his motion to
6 proceed *in forma pauperis* (ECF No. 1) is denied as moot.

7 By order filed May 30, 2013, the Court ruled that the amended petition was subject to
8 dismissal because the petition failed to state a claim for habeas relief and that claims in the petition
9 were unexhausted. (ECF Nos. 10).

Petitioner filed a motion for a stay. (ECF No. 12). In *Rhines v. Weber*, 544 U.S. 269 (2005), the Supreme Court placed limitations upon the discretion of the court to facilitate habeas petitioners' return to state court to exhaust claims. The Court may stay a petition containing both exhausted and unexhausted claims if: (1) the habeas petitioner has good cause; (2) the unexhausted claims are potentially meritorious; and (3) petitioner has not engaged in dilatory litigation tactics. *Wooten v. Kirkland*, 540 F.3d 1019, 1023-24 (9th Cir. 2008). In the instance case, the unexhausted claims are not potentially meritorious and petitioner has not shown good cause for the failure to exhaust his

1 claims in state court. The motion for a stay is denied. This action is dismissed for failure to exhaust
2 claims in the amended petition and for failure to state a cognizable habeas claim. See ECF No. 10;
3 *see also Estelle v. McGuire*, 502 U.S. 62, 68 (1991); *Rose v. Lundy*, 455 U.S. 509, 521-22 (1982).

4 **IT IS THEREFORE ORDERED** that petitioner's motion to proceed *in forma pauperis*
5 (ECF No. 1) is **DENIED** as moot.

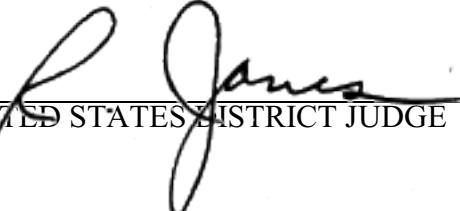
6 **IT IS FURTHER ORDERED** that petitioner's motion for a stay (ECF No. 12) is **DENIED**.

7 **IT IS FURTHER ORDERED** that this action is **DISMISSED WITHOUT PREJUDICE**
8 for failure to state a cognizable habeas claim and failure to exhaust claims.

9 **IT IS FURTHER ORDERED** that petitioner may file a new habeas petition in a new action,
10 once his claims are exhausted, but shall file no further documents in this case.

11 **IT IS FURTHER ORDERED** that petitioner is **DENIED A CERTIFICATE OF**
12 **APPEALABILITY**. Reasonable jurists would not find the dismissal of the improperly-commenced
13 action without prejudice to be debatable or wrong.

14 DATED this 18th day of February, 2014.

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17 UNITED STATES DISTRICT JUDGE
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